IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

NOTICE OF MOTION NO.2608 OF 2007
IN
APPEAL NO.569 OF 2007
IN
ARBITRATION PETITION NO.105 OF 2006

ALONG WITH

APPEAL NO.569 OF 2007
IN
ARBITRATION PETITION NO.105 OF 2006

M/s.S.R. Fashions .. Appellant.

Versus

M/s.APS International Inc. .. Respondent.

Mr.H.N. Thakore i/by Thakore Jariwala & Associates for the appellant.

None for the respondent.

CORAM : F.I. REBELLO &
D.B. BHOSALE, JJ.

DATED : 17TH AUGUST, 2007.

P.C. :

1. The present application is for condonation of delay in preferring the appeal. The appeal is against the order dated 4th April, 2006.

2. From the impugned order, we find that the learned Judge has not considered application under Section 9, as the Petitioners had not taken steps for constituting the Arbitral Tribunal.

3. The learned counsel now states that application under Section 11 for constitution of Tribunal has already been moved and is pending. Considering the above, as the appellant has now taken steps to get the Arbitral Tribunal constituted, and considering the judgment of the Supreme Court, the appellant can now move an application under Section 9 of the Act. It is open to a party either before or during or after the proceeding for arbitration to apply for reliefs under Section 9 of the Arbitration & Conciliation Act, 1996.

4. In the light of that, we are not inclined to interfere. However, it will always be open to the appellant herein to apply afresh under Section 9 and that will be decided within one month.

5. The notice of motion and the Appeal are disposed of, with no order as to costs.

(D.B. BHOSALE, J.) (F.I. REBELLO, J.)